

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Nicolas Bautista Mora, both individually, and on
behalf of those similarly situated,

Plaintiff,

v.

DJR, Inc. d/b/a Encore Mechanical,

Defendant.

Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 55**

Plaintiff Nicolas Bautista Mora ("Plaintiff"), by attorneys Justicia Laboral LLC, submits this Motion For Default Judgment Pursuant to Federal Rule of Civil Pro. 55, and states:

1. This is a cause of action whereby Plaintiff seeks redress for unpaid overtime wages under the Fair Labor Standards Act (29 USC § 201, et. seq.).
2. On May 22, 2023, summonses were issued as to DJR, Inc. d/b/ a Encore Mechanical and Dale Reeves (collectively "Defendants"). Dckt. 5. On June 2, 2023, summons for Defendants were returned executed. Dckts. 6-7.
3. On July 14, 2023, Plaintiff moved for default against Defendants. Dckt. 10. On July 18, 2023, Clerk's entry of default was entered. Dckt. 12.
4. On May 23, 2024, Plaintiff filed a Notice of Voluntary Dismissal for Defendants Dale Reeves and Tammi Danielson. Dckt. 21.
5. Pursuant to this Court's order (Dckt 22), the only remaining Defendant is DJR, Inc. d/b/a Encore Mechanical.

6. Accordingly, Plaintiff now moves for a default judgment against Defendant DJR, Inc. d/b/a Encore Mechanical pursuant to Federal Rule of Civil Procedure 55; in support, Plaintiff tenders supporting documents.

7. Plaintiff is asking that a default judgment be entered in his favor in the amount of \$33,194.56 (representing unpaid wages and liquidated damages), plus reasonable attorney's fees and costs. See Nicolas Bautista Mora's Affidavit of Prove- Up, attached as Exhibit A.

8. Additionally, Plaintiff requests an award of reasonable attorney's fees and costs of suit in the amount of \$3,890.00 pursuant to 29 USC § 216(b) of the Fair Labor Standards Act. In support thereof, attached hereto as Exhibit B is the Petition for Attorney's Fees and Costs.

9. Additionally, in support of this Motion, Plaintiff attaches: (i) a Certificate of Default, attesting to the fact that Defendant has not entered an appearance in this case (See Exhibit 3); and (ii) An Affidavit as to Military Service establishing that the individual Defendant is not on current active duty with the US Armed Forces (See Exhibit 4).

WHEREFORE, Plaintiff Nicolas Bautista Mora respectfully requests that this Motion be granted, and that the Court enter a default judgment in the amount of **\$37,084.56** against DJR, Inc. d/b/ a Encore Mechanical, and that the Court enter any other relief deemed just or necessary.

/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
6232 N. Pulaski, Suite 300
Chicago, IL 60646
P: 773-415-4898
E: jdore@justicialaboral.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Nicolas Bautista Mora, both individually, and on
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Defendant.

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Notice of Filing

To: DJR, Inc. d/b/ a Encore Mechanical
Defendant
10400 Springdale Rd.
Austin, Texas 78754

PLEASE TAKE NOTICE that on May 27, 2024, I caused to be filed the attached **Plaintiff's Motion for Default Judgment**, copies of which are hereby served upon you.

_____/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
6232 N. Pulaski, Suite 300
Chicago, IL 60646
P: 773-415-4898
E: jdore@justicialaboral.com

Certificate of Service

I, James M. Dore, an attorney, certify that I caused this **Notice and Plaintiff's Motion for Default Judgment** to be filed with the Clerk of the Court on May 27, 2024 and I certify that I served this notice and documents by sending via regular mail to the attorneys/parties of record at their listed addresses below, and depositing the same in the U.S. Mail in Chicago on May 27, 2024, with proper postage prepaid:

DJR, Inc. d/b/ a Encore Mechanical
Defendant
c/o RA Dale Reeves
10400 Springdale Rd.
Austin, Texas 78754

/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
6232 N. Pulaski, Suite 300
Chicago, IL 60646
P: 773-415-4898
E: jdore@justicialaboral.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

Nicolas Bautista Mora, both individually, and on
behalf of those similarly situated,

Plaintiffs,

v.

DJR, Inc. d/b/ a Encore Mechanical,

Defendant.

Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

Affidavit for Prove-Up by Plaintiff Nicolas Bautista Mora

Nicolas Bautista Mora, having been first duly sworn on oath, states:

1. I am an adult, over the age of twenty-one, and I have personal knowledge of the facts set forth in this affidavit, and I am a Plaintiff in the above captioned action.
2. My primary language is Spanish. I have read and reviewed this affidavit with the assistance of an interpreter, Derian Geovanni Palacios Morales, who is an employee of my lawyer's law firm, Justicia Laboral, LLC. I am a resident of Texas; I was formerly employed by Defendants DJR, Inc. d/b/a Encore Mechanical and Dale Reeves ("Defendants") in Texas.
3. I began working for Defendants in or before 2011 until March 7, 2023. My hours per week were approximately on average 54 hours per week. My rate of pay was \$16.24 per hour. My position was to install, repair and service heating and cooling systems.
4. Defendant Dale Reeves was the owner and manager of the business where I worked, and was in charge of all employees, including myself.
5. I was never paid time-and-a-half wages for any hours worked in excess of forty hours per week.
6. Attached hereto as Exhibit A is a spreadsheet showing my unpaid overtime wages on a week-by-week basis, as well as the damages I am seeking. The total unpaid overtime wages owed to me are \$16,597.28. Ex. A is incorporated herein.

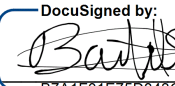
7. I would ask that the Court enter judgment in the amount of \$33,194.56, plus reasonable attorney's fees, plus costs of suit, itemized as follows:

- a) \$16,597.28 (unpaid overtime wages)
- b) \$16,597.28 (liquidated damages)
- e) TBD – reasonable attorney's fees and costs

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: 5/25/2024

DocuSigned by:

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Nicolas Bautista Mora

Interpreter Verification

I declare under penalty of perjury that I am fluent in both English and Spanish, and that on January 30, 2024, I read and interpreted this Affidavit from English to Spanish for Affiant.

Executed: 5/25/2024



Derian Geovanni Palacios Morales

EXHIBIT A-UNPAID OVER TIME CALCULATOR

Week	Av. Hours/Wk.	Hours Over 40	Hrly. Wage	MW/Hr.	Unpaid MW	Unpaid OT	FLSA Liquidated
5/24/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
5/31/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/7/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/14/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/21/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/28/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/5/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/12/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/19/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/26/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/2/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/9/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/16/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/23/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/30/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
9/6/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
9/13/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
9/20/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
9/27/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
10/4/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
10/11/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
10/18/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
10/25/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
11/1/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
11/8/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
11/15/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
11/22/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
11/29/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
12/6/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
12/13/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
12/20/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
12/27/2020	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/3/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/10/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/17/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/24/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/31/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/7/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/14/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/21/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/28/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
3/7/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
3/14/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
3/21/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
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5/2/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
5/9/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
5/16/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
5/23/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
5/30/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/6/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/13/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/20/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
6/27/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/4/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/11/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/18/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
7/25/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/1/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/8/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/15/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/22/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
8/29/2021	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68

1/22/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
1/29/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/5/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/12/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
2/19/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
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3/5/2023	54	14	\$16.24	\$7.25	\$0.00	\$113.68	\$113.68
TOTALS:						\$16,597.28	\$16,597.28

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behalf of those similarly situated,

Plaintiff,

v.

DJR, Inc. d/b/ a Encore Mechanical,

Defendant.

Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

PETITION FOR ATTORNEY'S FEES, TIME AND TASKS

James M. Dore, having been first duly sworn on oath, states:

1. Plaintiff Nicolas Bautista Mora retained me and the firm of Justicia Laboral LLC to represent him in the above captioned lawsuit against the named Defendant(s). The above captioned lawsuit involves claims under the Fair Labor Standards Act to collect unpaid wages and/or overtime from Defendant(s), their former employer.
2. I am the primary attorney responsible for handling this matter. My Texas Bar No. is 24128272. The administrative work on the file is performed by our employee, Derian Geovanni Palacios Morales, also referred to as "Gio" in our time keeping records. We do not bill any hourly time for work performed by Gio.
3. Our billable hourly rate is \$400.00 per hour for matters of this kind.
4. Our \$400.00 hourly rate is reasonable and comparable to rates charged by attorneys and staff of a comparative level, serving the same legal market.
5. The following list specifies an accurate statement of the subjects and the professional time spent and to be spent in the prosecution of the claim(s) of Plaintiff against the Defendants. The list represents the coincidental or reasonably current preparation of the subject matters and the time assigned as reflected in the records of the attorneys for Plaintiff:

Date	Atty	Hours	Description of Activity
5/22/23	JMD	0.30	REVIEW CASE DESCRIPTION AND INFORMATION; INTERVIEW PLAINTIFF REGARDING UNDERLYING FACTS OF THE CASE; RESEARCH RE: DEFENDANTS; ONLINE PRESENCE AND LOCATION;
5/22/23	JMD	1.00	DRAFT COMPLAINT; DRAFT CIVIL ACTION COVER SHEET; DRAFT APPEARANCE; DRAFT SUMMONSES TO DEFENDANTS; EMAIL TO SPS FOR SERVICE;
7/5/23	JMD	0.30	REVIEW STATUS OF SERVICE; DRAFT SUMMONS SERVICE EXECUTED FOR DEFENDANTS;
7/14/23	JMD	1.00	DRAFT AND FILE MOTION FOR DEFAULT;
7/18/23	JMD	0.10	REVIEW ORDER GRANTING DEFAULT
8/3/23	JMD	0.30	DRAFT AND FILE MOTION FOR
8/4/23	JMD	0.15	REVIEW ORDER RE: MOTION TO COMPEL DISCOVERY;
8/21/23	JMD	0.15	REVIEW ORDER GRANTING MOTION TO COMPEL DISCOVERY;
8/23/23	JMD	1.00	PREPARE SUBPOENA DUCES TECUM;
11/03/23	JMD	0.30	DRAFT AND FILE STATUS REPORT;
1/24/24	JMD	0.10	REVIEW COURT'S ORDER;
1/25/2024	JMD	3.00	DRAFT AFFIDAVIT OR PROVE-UP, INCLUDING SPREADSHEET DETAILING DAMAGES IN THE CASE; DRAFT EMAIL TO ILSE REGARDING SAME; DRAFT PETITION FOR ATTORNEYS FEES AND COSTS; DRAFT CERTIFICATE OF DEFAULT; DRAFT AFFIDAVIT AS TO MILITARY SERVICE; DRAFT NOTICE AND MOTION FOR DEFAULT JUDGMENT.

Total Hours: JMD 7.7 hrs X \$400.00 = \$3,080.00

Total Attorneys Fees = \$3,080.00

Costs	Date	Amount	Description
	5/22/23	\$402.00	Filing Complaint
	6/2/23	\$408.00	Service costs – Special Process Server – Defendants
Total Costs:		\$810.00	

6. These records identify the work that we did each day, the amount of time that we devoted to this matter on that day (including separate entries for each task), and a description of the work performed. The time entries on these invoices were entered by me personally, at or near the time of performing the work in the ordinary course of our daily practice. These billing records are kept in the ordinary course of our regularly conducted business activities. Some entries may have

been redacted in part for the purpose of protecting attorney-client communications or work product privilege.

7. The tasks performed and the costs incurred were all reasonably and necessarily incurred in the case. The fees and costs incurred reflect tasks that were performed competently and efficiently.

8. Accordingly, the total amount of attorney's fees and costs being sought are **\$3,890.00**.

9. I have personal knowledge of the facts set forth in this Affidavit and can testify in accordance therewith.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 27, 2024

/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
6232 N. Pulaski, Suite 300
Chicago, IL 60646
P: 773-415-4898
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Plaintiff,

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DJR, Inc. d/b/ a Encore Mechanical,

Defendant.

Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

AFFIDAVIT AND CERTIFICATE IN SUPPORT OF MOTION FOR DEFAULT

I, **James M. Dore**, attorney for Plaintiff(s) in the above captioned matter, do hereby certify that on May 27, 2024, I reviewed our file and/or the online docket for this case. I further certify that Defendant DJR, Inc. d/b/a Encore Mechanical has not entered an appearance in the lawsuit as of today's date.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 27, 2024

_____/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
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Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

AFFIDAVIT AS TO MILITARY SERVICE

I, **James M. Dore**, counsel for plaintiff, on oath state that with respect to Defendant **DJR, Inc. d/b/a Encore Mechanical** ("Defendant"), said defendant is not in the military service of the United States, since it is a corporation registered in the Texas Department of State. This affidavit is based on these facts. Defendant is operating a heating and cooling systems company in the geographic boundaries of the Western District of Texas and has been since at least 2011. Defendants DJR, Inc. d/b/a Encore Mechanical was served on May 23, 2023.

Verification

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 27, 2024

/s/ James M. Dore

Justicia Laboral LLC
James M. Dore (Texas Bar No. 24128272)
Attorneys for Plaintiffs
6232 N. Pulaski, Suite 300
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Plaintiff,

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DJR, Inc. d/b/ a Encore Mechanical,

Defendant.

Case No. 1:23-cv-00557

Honorable Judge Robert Pitman

Order on Plaintiff's Motion for Default Judgment

This Matter before the Court upon **Plaintiff's Motion for Default Judgment**, the Court having reviewed the submissions, and being advised, due notice being served, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Default Judgment is granted.
2. The Court hereby enters judgment in the in the amount of **\$37,084.56** against DJR, Inc. d/b/ a Encore Mechanical.

IT SO ORDERED.

DATED: _____

DISTRICT JUDGE